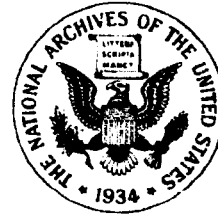


THURSDAY, MAY 25, 1978
PART IV



**DEPARTMENT OF
TRANSPORTATION**

**Materials Transportation
Bureau**

**TRANSPORTATION OF
HAZARDOUS WASTE
MATERIALS**

Proposed Provisions; Hearing

**Revised
1978
Proposed**

[4910-60]

DEPARTMENT OF TRANSPORTATION

Materials Transportation Bureau

[49 CFR Parts 171, 172, 173, 174, 175, 176, 177]

[Docket No. HM-145A; Notice No. 78-6]

TRANSPORTATION OF HAZARDOUS WASTE MATERIALS

Proposed Provisions; Hearing

AGENCY: Materials Transportation Bureau, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Hazardous Materials Regulations to specifically address the transportation of hazardous waste materials. The proposal will be considered at a joint EPA-DOT public hearing. The proposed amendments under the Hazardous Materials Transportation Act (HMTA) are necessary to recognize some of the characteristics peculiar to hazardous waste materials to which the Resource Conservation and Recovery Act (RCRA) is directed. The proposed rules would place minor recordkeeping requirements on shippers and transporters of hazardous wastes, would prohibit transportation and delivery to improper treatment, storage, or disposal sites, and would apply to materials listed in the Hazardous Materials Table when shipped as waste, as well as some waste materials not now designated as hazardous by the Department of Transportation (DOT). This proposal is intended to apply to hazardous wastes carried in either interstate or intrastate transportation.

DATE: Comments: Deadline for comments to be announced later (see supplementary information). Hearing: Joint EPA-DOT hearing at 9 a.m. on June 20, 1978, registration between 8:30 and 9 a.m.

ADDRESSES: Comments: Addressed to the Dockets Section, Office of Hazardous Materials Operations, Department of Transportation, 2100 Second Street SW., Washington, D.C. 20590. Comments may be viewed in the Dockets Section, Room 6500, between 9 a.m. and 5 p.m. weekdays. Hearing: At the Holiday Inn, Old Town, 480 King Street, Alexandria, Va., 703-549-6080. Requests to participate in the public hearing should be directed to: Ms. Gerri Wyer, Public Participation Officer, Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, Washington, D.C. 20460, 202-755-9157.

FOR FURTHER INFORMATION CONTACT:

Alan I. Roberts, Director, Office of Hazardous Materials Operations,

Materials Transportation Bureau,
2100 Second Street SW., Wash-
ington, D.C. 20590, 202-426-0656.

SUPPLEMENTARY INFORMATION: The RCRA (Pub. L. 94-580), which amends the Solid Waste Disposal Act (42 U.S.C. 3251 and following), directs the Environmental Protection Agency (EPA) to promulgate standards to be applied to persons generating, transporting, or treating, storing, or disposing of hazardous waste materials. The RCRA specifically directs EPA to promulgate regulations establishing standards applicable to transporters of hazardous wastes, regarding—

- (1) Recordkeeping concerning such hazardous waste transported, and their source and delivery points;
- (2) Transportation of such waste only if properly labeled;
- (3) Compliance with the manifest system * * * ; and
- (4) Transportation of all such hazardous waste only to the hazardous waste treatment, storage, or disposal facilities which the shipper designates on the manifest form to be a facility holding a permit issued under this subtitle (42 U.S.C. 6923).

The RCRA also requires EPA to publish regulations for generators of hazardous waste, regarding—

- (1) Recordkeeping practices [to] identify the quantities of such waste [and] the constituents thereof * * * ;
- (2) Labeling practices for any containers used for the storage, transport or disposal [to identify the waste];
- (3) Use of appropriate containers for such hazardous waste;
- (4) Furnishing of information on the general chemical composition of such hazardous waste to persons transporting, treating, storing, or disposing of such wastes;
- (5) Use of a manifest system to assure that all such hazardous waste generated is designated for treatment, storage, or disposal in * * * facilities * * * for which a permit has been issued [except on-site facilities] * * * ; and
- (6) Submission of reports to the Administrator [concerning quantities of hazardous waste generated and its disposition] [42 U.S.C. 6922].

Such transporter regulations as EPA may issue are required by the RCRA to be consistent with DOT regulations under the HMTA (title I of Pub. L. 93-633). However, EPA is authorized to recommend to the Secretary of Transportation changes to existing DOT regulations such as the designation of additional materials as hazardous under the HMTA.

EPA intends to propose generator standards and all other required hazardous waste regulations under subtitle C during the summer of 1978, as they are developed. On April 28, 1978, EPA proposed standards applicable to transporters of hazardous waste and also announced the June 20 public

hearing previously noted (43 FR 18506). EPA stated at that time that the comment period for all EPA subtitle C proposals would remain open for at least 60 days beyond the last date of publication. For the same reasons, the deadline for comment on this proposal, to be announced later by DOT, will be at least 60 days after the last notice published by EPA (45 days' notice will be given). Since the RCRA provides 6 months after publication of final transporter standards before they can become effective, 6 months will be provided between publication of any final DOT rule on hazardous wastes and a mandatory effective date (except for waste materials that are hazardous materials under the existing DOT Hazardous Materials Regulations).

The regulations for transportation of hazardous wastes that are proposed herein are largely duplicative of the EPA transporter standards proposal of April 28. Some of the references to 40 CFR part 250 may have to be changed, as those references are now based on the numeration shown in unpublished EPA working drafts of generator standards that may be altered before publication as an EPA notice of proposed rulemaking or final rule. Depending on the results of the DOT proposal, EPA eventually may publish jointly with DOT, modify their own proposal, or adopt forthcoming DOT regulations. EPA and DOT intend to enforce jointly any DOT regulations governing transportation of hazardous waste. The RCRA also provides for State authorization to establish and administer a State hazardous waste program in lieu of an EPA program (42 U.S.C. 6926), so that most of the functions the RCRA assigns to EPA ultimately may be carried out by States authorized for that purpose by EPA.

EPA and DOT held a joint hearing on October 26, 1977, at Des Plaines, Ill., to consider the possible development by DOT of regulations under the HMTA to achieve the goals of the RCRA regarding transporters of hazardous waste. Public comment received as a result of the joint hearing expressed concern with the possibility that compliance with duplicative EPA and DOT regulations could cause inefficiency or confusion and strongly supported the prospect of development of joint EPA-DOT regulations for this purpose. The Materials Transportation Bureau (MTB) believes that the DOT Hazardous Materials Regulations are capable of being modified under the HMTA to address the transportation hazards of waste materials and that the RCRA states the need for such a modification. Development of the necessary regulations under the HMTA can result in essentially a single set of DOT regulations applicable to the transportation of hazardous

materials which include hazardous wastes. Suitable DOT regulation of hazardous waste transportation will eliminate most of the additional and possibly duplicative regulations that would otherwise have to be issued by EPA. However, commenters should note that this DOT proposal is not identical to the April 28 EPA transporter proposal. Some differences of substance exist, and it is probable that some transporter requirements will be published by EPA, notwithstanding any final hazardous waste rules that DOT may issue.

Waste materials differ from virgin materials in several respects that impact transportation. The physical, chemical and biological characteristics of a waste are likely to be more difficult to establish in transportation emergencies than the characteristics of virgin materials which are often known by the commercial uses to which they are put. The mixing of waste materials from different sources increases the difficulty of predicting and communicating the hazard of the resulting mixture. In addition, the shipper of a waste material may have little economic interest in monitoring the transportation and delivery of the waste to a treatment, storage or disposal site. In the case of a hazardous waste, the added costs of proper disposal (for example, high temperature incineration, or deposit in a permitted landfill) may result in the use of less expensive methods of disposal that adversely affect public health and safety. Transportation responsibility is a key element to ensuring proper off-site disposal.

In addressing these problems, the RCRA relies heavily on use of a hazardous waste manifest which resembles hazardous materials shipping papers required by DOT. Unlike hazardous materials shipping papers, the manifest is intended to provide a record of the transportation and delivery for disposal, treatment or storage of a hazardous waste. The accountability provided by the hazardous waste manifest extends to intrastate activity and is intended to ensure transportation to a proper facility prepared to accept the particular hazardous waste consigned to it.

Existing DOT Hazardous Materials Regulations generally do not apply to intrastate highway carriers or shippers. The distinction between inter- and intrastate transportation is much less pronounced in transportation by other modes. Both forms of transportation are regulated in air commerce, most rail carriers operate as interstate carriers, and movement of hazardous materials on the navigable waters of the United States is subject to Coast Guard enforcement activities. In highway carriage, however, there are substantial intrastate carriage operations

not presently subject to the Hazardous Materials Regulations.

The HMTA defines "commerce" to include interstate commerce and intrastate transportation that affects interstate commerce (HMTA, §103(1); see also HM-134, 41 FR 38175, September 9, 1976). The fact that the RCRA applies to all waste transporters, regardless of whether interstate commerce is directly involved, amounts to a finding that intrastate commerce in hazardous wastes affects interstate commerce. The necessity of assured delivery to a permitted disposal facility, as against possible diversion of shipments to improper disposal sites, requires regulation of intrastate movements. To the generator/shipper, or to the carrier of a hazardous waste, it may not be clear whether a given shipment is being offered for interstate or intrastate transportation, since the accompanying shipping paper may show alternate consignee facilities. This uncertainty also may hamper enforcement efforts, if the proposed DOT amendments restricted their application solely to interstate transportation. In view of this, the proposal herein would apply to both interstate and intrastate transportation of hazardous wastes by all modes.

The proposed amendments:

(1) Would apply to the offering, transportation and delivery, both interstate and intrastate, of hazardous waste materials.

(a) *Government agencies.* Existing Hazardous Materials Regulations do not apply to Federal, State or local governments that carry hazardous materials as a part of a governmental function, using government employees and vehicles, but do apply to such agencies that offer hazardous materials for transportation by common or contract carriers. The DOT proposal would apply similarly. Note that the EPA transporter proposal would apply to all governmental agencies, regardless of the nature of their activities.

(b) *Commonwealth of the Northern Mariana Islands.* Due to differences in statutory definitions, the DOT proposal, unlike the EPA transporter proposal, would not apply to the Northern Marianas (49 U.S.C. 1802(5); 42 U.S.C. 6903(31)).

(c) *On-site disposal.* Carriers subject to existing Hazardous Materials Regulations are regulated when traveling on or across any public highway, and the DOT proposal would similarly apply, subject to some EPA exceptions. The EPA transporter proposal would define "on-the-site" treatment, storage or disposal, to which transporter standards would not apply, to include contiguous sites separated only by public or private right-of-way (see EPA proposal, §§ 250.30(b) and 250.31(h)).

(2) Would amend only the DOT Hazardous Materials Regulations. The

Federal Motor Carrier Safety Regulations (49 CFR Parts 390-397) would not be extended to include intrastate carriers, even though those regulations were recently incorporated by reference in the Hazardous Materials Regulations at 49 CFR 177.804. Also, this proposal does not address bulk shipment of hazardous materials by vessel, which is governed by Coast Guard regulations at 46 CFR Parts 30-40, 64, 98, 148, and 151.

(3) Would define "hazardous waste" to include presently recognized hazardous materials when shipped as waste, unless not recognized by the EPA as a hazardous waste. In view of their expected identification or listing under the RCRA as hazardous waste, the definition also would include materials shipped as waste, such as soil contaminated with polychlorinated biphenyls, which are not now recognized as hazardous materials. The definition would result in the designation of all hazardous wastes as hazardous materials, although some hazardous materials shipped as waste might not be hazardous wastes. Hazardous wastes would become a subset of hazardous materials, classed either by a specific entry in the Hazardous Materials Table, or by inclusion in a new ORM-E class (hazardous waste, n.o.s.).

(4) Would prohibit the offering, transportation or delivery of hazardous wastes to sites not sanctioned by the RCRA. With narrow exceptions, a hazardous waste, under this proposal, could be transported only to a site permitted by the EPA or by an authorized State for treatment, storage or disposal of that waste (exceptions include household refuge and small amounts of some wastes that may be excepted by EPA).

(5) Would require additional information on shipping papers. Additional information required to complete a RCRA manifest would have to be entered on hazardous materials shipping papers, or the manifest itself could be used as the shipping paper, provided it meets DOT requirements.

(6) Would allow a greater latitude for use of nonrefillable and reconditionable containers for some hazardous waste shipments.

(7) Would establish a stringent definition of when a container (under 110 gallons) is "empty" for purposes of the DOT Hazardous Materials Regulations generally, with a general placarding exception, and a particular hazardous waste marking exception. Many shipments of "empty" packagings containing residues of a hazardous material would not generally require placarding, and packagings containing a hazardous waste residue would not have to be marked "waste" if the residue is otherwise adequately identified under the Hazardous Materials Regulations.

(8) Would require carriers to submit a telephone report for any improper

hazardous waste discharge, and to submit additional details on the written hazardous materials incident report (form F5800.1) presently required by DOT. Unlike the EPA transporter proposal (§ 250.37(a)), this proposal does not address emergency situations. Existing DOT rules concerning carriers (e.g., 49 CFR 177.823 and .854) and emergency exemptions (49 CFR 107.113) should suffice. Moreover, the DOT proposal does not assign responsibility for cleaning up a spill but rather leaves it to be assigned by State or local law. Note that the EPA transporter proposal would require the carrier to clean up a spill or to take such action as is directed by an appropriate agency (§ 250.37(c)), and would limit reports to accidental discharges (§§ 250.31(j); 250.37(b)).

(9) Would require carriers to retain for three years a copy of each manifest or other document certifying delivery, and would require receipting signatures for shipments of hazardous waste transferred between carriers in any mode (compare the EPA transporter proposal, § 250.35(b)).

(10) Would preempt inconsistent State and local requirements. The HMTA provides in section 112 that any requirement of a State or its political subdivision which is inconsistent with the HMTA or with regulations issued thereunder is preempted. If this proposal is issued as a final rule under the HMTA, it will preempt inconsistent State and local requirements. The proposal contains a provision which specifically addresses preemption of different or additional packaging, marking, labeling and placarding requirements, certain reporting requirements, and certain shipping paper requirements. Note that the RCRA provides for the establishment of authorized State hazardous waste management programs after EPA review, and that a waiver of preemption is possible under the HMTA for qualified State requirements. (see 49 CFR Part 107).

(11) Would not result in a major national economic impact, nor in a major increase in costs or prices for carriers generally, industries that ship hazardous waste, levels of government, geographic regions or specific elements of the population. Required use of specification packaging would be new only to intrastate hazardous waste carriers and their shippers not now required by State or local law to use DOT specification packaging for hazardous materials. This proposal would not require specification packaging for waste materials not presently regulated as hazardous materials. The basis for this conclusion is discussed in somewhat greater detail in an economic evaluation prepared by MTB, and is based in part on a preliminary EPA study entitled "The Economic Impact of the Hazardous Waste Transportation Reg-

ulations (section 3003 of the RCRA)" which was prepared by A. D. Little, Inc. Both documents are available for examination in the dockets section at the address previously shown.

(12) Do not require preparation of an Environmental Impact Statement. The transportation rules proposed herein do not directly concern disposal methods the RCRA requires for hazardous wastes and are not expected to have a significant impact on the environment.

Primary drafters of this proposal are Lee Metcalfe, Office of Hazardous Materials Operations, and Douglas Crockett, Office of the Chief Counsel, Research and Special Programs Administration.

DETAILED REVIEW BY SECTIONS

§ 171.3

Section 171.3 is the basic provision regarding the offering, transportation and delivery of hazardous waste. The proposed rules would apply to all transportation, including intrastate transportation.

The identification of a material as a hazardous waste may result from a shipping paper entry or from actual knowledge by the offerer or transporter. A carrier is not obligated to examine each component of a waste shipment to determine whether it contains a hazardous waste, but he has knowledge that he is being offered a hazardous waste if a material is shown on shipping papers as a hazardous material and is offered for treatment, storage or disposal, or if the carrier, due to the nature of his carriage operation, for example, has adequate reason to be aware that a material so offered is hazardous.

Under paragraph (b), any motor carrier transporting a hazardous waste for which an accompanying manifest is required would have to display the same identification marking on his vehicle that is required by the Federal Motor Carrier Safety Regulations. Note that the EPA transporter proposal would limit this requirement to vehicles that must be placarded or that are carrying more than 1,000 lbs. of a hazardous waste (§ 250.38(b)).

A hazardous waste could be delivered only to a permitted facility unless the exception in paragraph (c)(2) applies. Certain small shipments that EPA anticipates may be shipped without a manifest could go to facilities not holding permits under subtitle C of the RCRA, provided each shipment is offered and transported separately from, and not consolidated with, other hazardous wastes, but note that DOT shipping papers may still be necessary even in the absence of a manifest. Note also that carriers who consolidate individual hazardous waste shipments for delivery to a treatment,

storage or disposal site might be subject to EPA requirements as generators of hazardous waste, a circumstance that would occur if different wastes are consolidated so as to change the identity of the resulting composite waste material. Even under existing DOT regulations, if a carrier mixes hazardous materials after acceptance from a shipper in a way that changes the hazards involved, the resulting hazardous material cannot be transported except in compliance with DOT regulations concerning that new material.

Where small shipments not under a manifest are consolidated, and the identity of the resulting mixture is not different from its constituent components, a manifest is not expected to be required for transportation of that mixture (although shipping papers may be), but a manifest may be required by the permitted consignee facility to which the shipment is delivered.

Household refuse and household septic tank pumpings would be excepted from the subchapter by paragraph (d), so that neither the offer of such materials nor their transportation would be regulated by DOT.

Paragraph (e) would state the MTB's intent and opinion regarding preemption of certain categories of State hazardous waste regulations that concern transportation. The Hazardous Materials Regulations generally preempt State and local requirements which are inconsistent with requirements contained in those regulations, a fact that would be equally true of the proposal if published as a final rule. Paragraph (e) is intended to clarify some aspects of the preemptive effects of the proposal. State or local action not addressed in paragraph (e) would still be preempted if inconsistent with requirements of this proposal should it become a final rule under the HMTA.

Section 171.8. Section 171.8 contains proposed definitions related to hazardous waste. Note that the proposed definition of "hazardous waste" is limited to materials that are subject to EPA requirements that are to be specified in 40 CFR Part 250.

Section 171.17. Section 171.17 proposes reporting requirements in addition to those presently specified in §§ 171.15 and 171.16, although compliance with proposed § 171.17 would satisfy the requirements of § 171.15. Telephonic contact with the National Response Center, U.S. Coast Guard, or an EPA regional official at an appropriate regional office would be required when any discharge of a hazardous waste to the environment occurs during transportation. Excluded from the DOT requirement would be telephonic contact when a discharge occurs within the facilities

of a shipper or consignee. (However, the discharge of a substance designated as hazardous by EPA under 40 CFR Part 116 into or upon the navigable waters of the United States is reportable under the Clean Water Act, Pub. L. 92-500, section 311(b)(5)). This proposed exclusion would have no effect on the telephonic notification requirement specified in §171.15. Under the proposal, it is possible that two telephonic notifications would be required. Paragraph (b) of this section specifies the information to be supplied to the official to whom the report is made, and paragraph (c) specifies reporting requirements in addition to those presently required to be filed on DOT Form F5800.1 under §171.16. The additional information that would be required may necessitate the filing of supplemental reports if the disposition of a discharged material is not known by the reporter within the 15-day reporting time frame. State reporting requirements for hazardous wastes are limited to duplication of Federal requirements except for immediate notification (see proposed §171.3).

Section 172.101. Present §§172.100 and 172.101 would be combined into a revised and amended §172.101 in order that the Hazardous Materials Table and the language introducing the table be contained in one section of the regulations. Paragraphs (b) (2) and (3) would be modified to exclude from single mode applicability those materials which are hazardous wastes and to subject those materials to transportation requirements regardless of the mode of transportation involved. Paragraph (c)(8) would be added to specify that a proper shipping name include the word "waste" when the material described is a hazardous waste subject to EPA's requirements in 49 CFR Part 250. Use of this method to appropriately prescribe the proper shipping name for a hazardous waste alleviates the necessity for the addition of hundreds of proper shipping name entries to the Hazardous Materials Table. Only one new shipping name "Hazardous waste, n.o.s.," would be added to the Hazardous Materials Table; the other italicized entries are for cross-reference and referral purposes.

Section 172.200. Section 172.200(b) would be amended to remove the ORM exceptions to the shipping paper requirements when a material being offered or transported is a hazardous waste. Also, an additional entry pertaining to ORM-E materials would be included.

Section 172.201. Section 172.201(c) would be added to require both the name and address of the shipper and the consignee on shipping papers for hazardous wastes. These entries are essential to the establishment of ap-

propriate controls relative to the origin and destination of hazardous wastes.

Section 172.203. Section 172.203 would include a new paragraph (j) requiring the inclusion of the EPA specified name for a hazardous waste when the proper shipping name for a material is specified in §172.101 by other than its technical name.

Section 172.205. A new §172.205 would be added concerning the carriage and disposition of hazardous waste manifests to be required by the EPA in 40 CFR 250.22. Note that paragraph (a) requires a receipting signature whenever a shipment is transferred between carriers in any mode (compare EPA proposal, §250.35(b)). Paragraph (b) provides that a hazardous waste manifest may be used as the shipping paper for a material if it contains all the information required by Part 172, Subpart C.

Section 172.300. Section 172.300 would be amended to specifically reference §173.29 regarding empty packagings and a paragraph (b) would be added which would require packages of hazardous waste to be marked as required by EPA.

Section 172.306. Section 172.306 would be amended by adding a new paragraph (b) requiring certain packages to be marked with both the name and address of a shipper of a hazardous waste, thereby excluding the option afforded in paragraph (a) of the section which permits the name and address of the shipper or the consignee to be displayed. This provision would parallel proposed §172.201(c).

Section 172.316. Section 172.316 would be amended to include ORM-E materials in the package marking requirements for ORM's.

Section 172.504. Section 172.504 would be amended by adding a new paragraph (d) to exclude certain packagings containing only the residue of hazardous materials from consideration in determining the applicability of the placarding requirements.

Section 173.2. Section 173.2 would be amended to add ORM-E to the "order of hazards" listing for classification purposes.

Section 173.28. Section 173.28 would be amended to consolidate three paragraphs that contain restrictions pertaining to containers marked NRC and STC which are reused. Paragraph (n) would be amended to include a reference to ORM-E materials regarding reuse of STC marked packagings and a new paragraph (p) would be added to permit the reuse of NRC or STC marked specification packagings for one-time shipments of hazardous wastes under certain specified conditions. Note the first condition stipulates that the material must be packaged "in accordance with this part"; therefore, a flammable liquid, n.o.s.

would be packaged in accordance with §173.119. This reuse authorization for hazardous wastes would not permit any deviation from the packaging requirement of Part 173 except as specifically stated in §173.28. Proposed paragraph (p)(5) would permit the collection of certain STC marked packagings for reconditioning and reuse in accordance with the regulations if they can be properly requalified under the provisions specified in paragraph (m) of the section.

Section 173.29. Section 173.29 would be amended to require, with certain exceptions, a packaging that contains the residue of a hazardous material to be offered for transportation in the same manner as required when it previously contained a greater quantity of a hazardous material. A similar proposal was made under Docket HM-112 (39 FR 3022, 3095) on January 24, 1974. A number of commenters on that proposal requested that the "empty container" proposal for packagings having capacities of 110 gallons or less be removed from the HM-112 rulemaking action and considered in a separate rulemaking in order to afford commenters additional time to submit appropriate recommendations concerning the handling of so-called "empty packagings." Pursuant to the requests of several commenters, the matter was removed from that rulemaking action; however, no comments or recommendations have been received since that time. In specifying appropriate regulations for hazardous materials and hazardous wastes in connection therewith, the Bureau believes it is essential to deal with the subject of so-called "empty packagings" containing the residues of hazardous materials. Also proposed paragraph (c) would specify that a packaging being discarded would, without any qualification, be considered to contain a hazardous waste if it contains the residue of a hazardous material. The term "[place where it is] to be discarded" does not refer to those facilities where packagings themselves are reprocessed or reconditioned for further use but does include long-term storage facilities. The Bureau is fully aware of the ramifications of its proposed amendments to §173.29 and solicits constructive comments relative to alternative regulatory requirements that would achieve the same level of safety as proposed in this rulemaking.

Section 173.118a. Section 173.118a would be amended to exclude a combustible liquid from the 110 gallons or less exception when it is a hazardous waste subject to 40 CFR Part 250. Paragraph (b)(1) would be amended to include a reference to hazardous waste manifests. Paragraph (b)(5) would be amended to reference the special reporting requirements in proposed §171.17.

PROPOSED RULES

Section 173.389. Section 173.389 would be amended to restate the definition of radioactive materials to clarify the fact that the definition applies only for purposes of the Hazardous Material Regulations.

Section 173.500. Section 173.500 would be amended to clarify the definition of ORM materials. This clarification is essential to implementation of the ORM-E class which is included in new paragraph (a)(5). Note that the ORM-E definition includes hazardous wastes subject to the regulations of the EPA in 40 CFR Part 250, but is designated so as not to exclude other materials that may be included within this class at a future time.

Section 173.505. Section 173.505(a) would be revised for clarification of the limited quantity exceptions of ORM-A, B, and C materials, since the basic function of the regulations presently stated is to exclude certain materials from specific packaging requirements when they are offered for transportation in packages as Limited Quantities. The proposal is a more coherent restatement of this function.

Section 173.510. Section 173.510 would be amended to exclude the basic packaging requirements of that section from the exceptions specified in § 173.505 and a new paragraph (5) would be added requiring that transport vehicles used to transport ORM materials be free from leaks and that all openings must be securely closed. Of significance is the proposed prohibition against use of open-top freight containers and transport vehicles for bulk shipments. This prohibition would apply to the use of open or tarp-covered dump trucks for the transport of hazardous wastes or any other hazardous material in bulk. Commenters opposed to such a prohibition are invited to submit suggestions concerning appropriate controls for tarp-covered vehicles that would assure compliance with § 173.24.

Section 173.1300. A new Subpart I would be added to Part 173 to address ORM-E materials and a new § 173.1300 would be added to address hazardous wastes, n.o.s. No specific packaging requirements are being proposed in this rulemaking for such materials other than a reference to the basic requirements for ORMs in § 173.510 and Subpart A to Part 173. For example, if a hazardous waste is to be offered for transportation by air, the requirements of § 173.6 in Subpart A would apply. It may be necessary to add specific packaging requirements for certain hazardous wastes (not in any other class according to § 173.2) in the future when they are specifically identified. Paragraph (b) provides an exception under certain conditions.

MODAL PARTS

Sections 174.24 and 176.11 would be amended to exclude hazardous wastes

from the exceptions specified for ORM materials.

Sections 174.45, 175.45, 176.48, and 177.807 would be amended to reference proposed new § 171.17 concerning the reporting of discharges involving hazardous wastes.

Section 177.823(b) would be added to include a requirement for motor vehicles transporting hazardous wastes to be marked as specified at 49 CFR 397.21 (b) and (c).

The following table shows the location in this proposal of subjects addressed in the EPA transporter proposal of April 28, 1978 (43 FR 18506):

EPA proposed section ¹	DOT proposed section ²
Sec. 250.30:	
(a).....	Sec. 171.3 (a) and (c).
(b) and (c).....	No equivalent.
Sec. 250.21,	
Introductory	
text:	
(a) and (b).....	No equivalent.
(c).....	Existing sec. 171.8.
(d).....	Sec. 171.8.
(e).....	Sec. 172.205.
(f) and (g).....	Existing sec. 171.8.
(h).....	No equivalent.
(i).....	Sec. 171.8.
(j) and (k).....	No equivalent.
(l) and (m).....	Existing sec. 171.8.
Sec. 250.32.....	Secs. 171.3(b) and 171.17(c)(1).
Sec. 250.33.....	Sec. 172.205(a)(4).
Sec. 250.34:	
(a), (b), and (c).....	Sec. 172.205.
(d).....	Sec. 171.3.
(e).....	Existing secs. 174.47 and 174.50, 175.90, 176.50, and 177.854.
(f).....	Existing sec. 173.21.
Sec. 250.35 (a), (b),	Sec. 172.205.
(c), and (d).....	
Sec. 250.36:	
(a).....	Sec. 171.3(c).
(b) and (c).....	No equivalent.
Sec. 250.37:	
(a).....	Existing secs. 107.11 and 177.823.
(b).....	Sec. 171.17.
(c).....	No equivalent.
Sec. 250.38:	
(a).....	Existing sec. 172.500.
(b).....	Sec. 177.823(b).

¹40 CFR pt. 250.

²49 CFR pts. 171-177.

In accordance with the foregoing, it is proposed to amend Parts 171, 172, 173, 174, 175, 176, and 177 of Title 49, Code of Federal Regulations, as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

1. Section 171.3 would be added to read as follows:

§ 171.3 Hazardous waste.

(a) No person may offer for transportation or transport in interstate or intrastate commerce any quantity of a hazardous waste, except in accordance with the requirements of this subchapter.

(b) No person may transport a hazardous waste for which a hazardous waste manifest is required by 40 CFR Part 250 unless—

(1) The carrier's EPA identification code, which may be obtained from

EPA or an authorized State, is properly entered on the manifest; and

(2) The carrier's transport vehicle is marked as required by 49 CFR 397.21 (b) and (c).

(c) Except as otherwise provided in this paragraph, no person may consign or deliver a hazardous waste subject to this subchapter to any place other than a permitted facility.

(1) If a person transporting a hazardous waste determines—

(i) That it is not reasonably possible to deliver that waste to a permitted facility, he shall return it to the shipper unless the hazardous waste has been commingled in a single compartment or packaging, or

(ii) That it is not reasonably possible to deliver that waste to a permitted consignee facility, when one is designated on the shipping paper, he may deliver it to another permitted facility otherwise identified by the shipper, provided all copies of the shipping paper are amended to reflect the actual delivery made.

(2) This paragraph does not apply to a shipment of hazardous waste—

(i) For which 40 CFR Part 250 does not require a manifest;

(ii) Which is accepted for transportation at a single shipping location;

(iii) Which is carried only on a transport vehicle that is not carrying any other hazardous waste; and

(iv) Which is delivered to a site not prohibited by local, State, or Federal law from receiving the waste.

(d) Any person who offers for transportation or transports household refuse or household septic tank pumpings generated at the site at which the material is offered is not required to comply with this subchapter, if those materials are not offered or transported with any other hazardous waste.

(e) With regard to a hazardous waste subject to this subchapter, any requirement of a state or its political subdivision is inconsistent with this subchapter if it applies because that material is a waste material and applies differently from or in addition to the requirements of this subchapter concerning:

(1) Packaging, marking, labeling or placarding; or

(2) Format or contents of discharge reports (except immediate reports for emergency response); or

(3) Format of contents of shipping papers, except any additional requirement of the State or locality of consignment which is part of an authorized state hazardous waste management program under 42 U.S.C. 6926.

2. Section 171.8 would be amended to add the following definitions in their proper alphabetical sequence:

§ 171.8 Definitions and abbreviations.

FEDERAL REGISTER, VOL. 42, NO. 102—THURSDAY, MAY 25, 1978

PROPOSED RULES

5. In § 172.200 the introductory text of paragraph (b), paragraphs (b)(1), (b)(2), and (b)(3) would be revised; paragraph (b)(4) would be added to read as follows:

§ 172.200 Applicability.

(b) *Applicability to ORM's.* This subpart applies to—

(1) An ORM-A, B or C that is offered or intended for transportation by air when it is subject to the regulations pertaining to transportation by air as specified in § 172.101, or is a hazardous waste; or

(3) An ORM-D that is offered or intended for transportation by air, or is a hazardous waste; or

(4) An ORM-E that is a hazardous waste offered for transportation by a person who is a generator as defined by 40 CFR 250.21.

6. In § 172.201 paragraph (c) would be added to read as follows:

§ 172.201 General entries.

(c) *Name and address of shipper and consignee; hazardous waste.* Each shipping paper for hazardous waste must contain the name and address of the shipper and the consignee.

7. In § 172.203 paragraph (j) would be added to read as follows:

§ 172.203 Additional description requirements.

(j) *Hazardous waste.* When a hazardous waste is described in § 172.101 by other than its technical name, the EPA name for the material shall be included in parentheses following the proper shipping name. For example: Hazardous waste, n.o.s. (Polychlorinated biphenyl contaminated soil), ORM-E.

8. § 172.205 would be added to read as follows:

§ 172.205 Hazardous waste manifest.

(a) The following requirements apply to the Hazardous Waste Manifest when required by 40 CFR 250.22 for hazardous waste transportation:

(1) No less than three copies signed by the shipper and the carrier shall be carried with each shipment to its destination.

(2) Two copies shall be given to the connecting carrier or consignee.

(3) The delivering or transferring carrier shall retain one copy signed by the connecting carrier or consignee acknowledging transfer or delivery.

(4) The delivering or transferring carrier shall retain for three years his copy of the manifest, or if a copy of the manifest does not accompany the

shipment during transportation, a delivery document signed by the connecting carrier or by the consignee containing the following information:

(i) The manifest number;

(ii) The generator's EPA identification code;

(iii) The consignee's EPA identification code; and

(iv) The information required by this subpart except § 172.204.

(5) If a delivering or transferring carrier cannot obtain a singature showing receipt by the consignee or connecting carrier, he shall note on the manifest or delivery document the time and date of delivery, the reason why a receipting signature was not immediately available, and he shall obtain the receipting signature within five working days after delivery.

(b) A Hazardous Waste Manifest, required by 40 CFR 250.22, containing all of the information required by this subpart may be used as the shipping paper.

9. § 172.300 would be revised to read as follows:

§ 172.300 General marking requirements.

(a) Except as provided by this subchapter, each person who offers a package containing a hazardous material for transportation shall mark the package with the proper shipping name required by § 172.101. However, when it has been determined by the shipper that a package has been previously marked as required for the material it contains, it need not be remarked. (For empty packagings see § 173.29 of this subchapter.)

(b) A package containing hazardous material may not be offered for transportation unless it is marked as required by 40 CFR 250.26.

(c) This section does not apply to portable tanks, cargo tanks, and tanks cars.

10. In § 172.306 the Heading and introductory text of paragraph (a) would be revised; paragraph (b) would be added to read as follows:

§ 172.306 Shipper's or consignee's name and address.

(a) Each package containing a hazardous material (except a hazardous waste), offered for transportation must be marked with the name and address of the shipper or consignee except when the package is—

(b) Each package other than a cargo tank, tank car, or portable tank, containing a hazardous waste must be marked with the name and address of the shipper.

11. In § 172.316 the introductory text of paragraph (a) and paragraph (c) would be revised; paragraph (a)(7) would be added to read as follows:

§ 172.316 Packagings containing material classed as ORM.

(a) Except as provided in § 172.505, each package containing a material classed as ORM-A, B, C, D, or E, must be plainly, durably, and legibly marked on at least one side or end with the appropriate ORM designation immediately following or below the proper shipping name of the material. The appropriate ORM designation must be placed within a rectangle that is approximately ¼ inch (6.3 mm.) larger on each side than the designation. The appropriate designation for each ORM must be:

(7) ORM-E for an ORM-E.

(c) The marking ORM-A, B, C, D, or E is the certification by the person offering the package for transportation that the material is properly described, classed, packaged, marked, and labeled (when appropriate) and in proper condition for transportation according to the applicable regulations of the Department. This form of certification does not preclude the requirement for a certificate on a shipping paper when required by § 172.204.

12. In § 172.504 paragraph (d) would be added following the tables to read as follows:

§ 172.504 General placarding requirements.

(d) Any packaging having a capacity of 110 gallons or less that contains only the residue of a hazardous material covered by Table 2 in paragraph (c) of this section need not be included in determining the applicability of the placarding requirements.

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

13. In § 173.2 paragraph (a)(16) would be added to read as follows:

§ 173.2 Classification of a material having more than one hazard as defined in this part.

(a) * * *

(16) ORM-E.

14. In § 173.28 the introductory text of paragraph (h) and paragraph (n) would be revised; paragraphs (h)(1), (i), and (j) would be deleted; paragraph (p) would be added to read as follows:

§ 173.28 Reuse of containers.

(h) Except as provided in paragraphs (m), (n), and (p) of this section, single-trip containers (marked STC) and nonreusable containers, (marked NRC) subject to the specification requirement of part 178 of this subchapter, from which contents have been removed following use for transportation of any material, may not be used thereafter for the transportation of hazardous materials.

(n) A single-trip packaging (STC) may be reused for the shipment of any corrosive solid, ORM-A, ORM-B, ORM-C, ORM-E, or any material not required by this subchapter to be shipped in a DOT specification packaging and paragraph (m) of this section does not apply to these materials.

(p) Packagings marked NRC or STC according to the specification requirements of part 178 of this subchapter may be reused for the shipment of hazardous wastes subject to the following conditions:

(1) The material is packaged, and each package is marked and labeled in accordance with this part.

(2) Transportation is performed by highway only.

(3) Packages are not offered for transportation less than 24 hours after they are finally closed for transportation, and each package is inspected for leakage immediately prior to being offered for transportation.

(4) Packages are loaded by the shipper and unloaded by the consignee, unless the motor carrier is a private or contract carrier.

(5) The packaging may be used only once under this paragraph and may not be used again for shipment of hazardous materials except in accordance with paragraph (m) or (n) of this section.

15. In § 173.29 paragraph (a) would be revised; paragraphs (b), (c), and (e) would be deleted; paragraph (f) would be redesignated paragraph (b); a new paragraph (c) would be added to read as follows:

§ 173.29 Empty packagings, portable tanks, cargo tanks, and tank cars.

(a) Except as otherwise provided in this section, a packaging having a capacity of 110 gallons or less that previously contained a hazardous material may not be offered for transportation unless offered in the same manner as required when it previously contained a greater quantity of hazardous material.

(1) This paragraph does not apply to a packaging that has been cleaned and

purged of all residue or to a packaging refilled with a material that is not subject to this subchapter.

(2) The requirements of § 172.101(c)(8) of this subchapter notwithstanding, the word "waste" does not have to be displayed as a part of the marking required by § 172.300 of this subchapter on a packaging having a capacity of 110 gallons or less that contains only the residue of a hazardous material.

(3) Any packaging having a capacity of 110 gallons or less that contains only the residue of a hazardous material covered by Table 2 of § 172.504 of this subchapter does not have to be included in determining the applicability of the placarding requirements of that section.

(4) Notwithstanding the stowage requirements in Columns (7) (a) and (b) of the Hazardous Materials Table in § 172.101 of this subchapter, for transportation by water, empty drums or empty cylinders not meeting the exception in paragraph (a)(1) of this section may be stowed on deck or under deck. Also, these packagings are not subject to subparts D through O of part 176 of this subchapter.

(c) A packaging that contains the residue of a hazardous material contains a hazardous waste for the purposes of this subchapter if the packaging is offered for transportation to be discarded.

16. In § 173.118a paragraph (a), (b)(1), and (b)(5) would be revised to read as follows:

§ 173.118a Exceptions for combustible liquids.

(a) Unless otherwise stated for a specific material, the regulations in this subchapter do not apply to a material classed as a combustible liquid in a packaging having a rated capacity of 110 gallons or less, except a combustible liquid that is also a hazardous waste subject to 40 CFR part 250.

(b) * * *

(1) Shipping papers, waybills, switching orders, or other billings including hazardous waste manifest;

(5) Reporting incidents as prescribed by §§ 171.15, 171.16, and 171.17 of this subchapter.

17. In § 173.389 paragraph (e) would be revised to read as follows:

§ 173.389 Radioactive materials; definitions.

(e) "Radioactive material" means any material or combination of materials, which spontaneously emits ioniz-

ing radiation. Materials in which the estimated specific activity is not greater than 0.002 microcuries per gram of material, and in which the radioactivity is essentially uniformly distributed, are not classed as Radioactive materials under this subchapter.

18. In § 173.500 the introductory text of paragraph (a) would be revised; paragraph (a)(5) would be added to read as follows:

§ 173.500 Definitions.

(a) An Other Regulated Material (ORM) is a material that: (1) may pose an unreasonable risk to health and safety or property when transported in commerce; and (2) does not meet any of the definitions of the other hazard classes specified in this subchapter, or (3) has been reclassified an ORM (specifically or permissively) according to this subchapter. ORM's are divided into classes as follows:

(5) An ORM-E is a material that is not included in any other hazard class, but is subject to the requirements of this subchapter. Materials in this class include—

(1) Hazardous wastes subject to the regulations of the EPA found in 40 CFR part 250.

19. In § 173.505 the introductory text of paragraph (a) would be revised to read as follows:

§ 173.505 Exceptions for other regulated material (ORM).

(a) an ORM of one of the following classes and quantities is not subject to a specific packaging requirement in subparts K, L, or M of this part if there is an exception reference to this section for the material in § 172.101 of this subchapter:

20. In § 173.510 the introductory text of paragraph (a) and paragraph (a)(1) would be revised; paragraph (a)(5) would be added to read as follows:

§ 173.510 General packaging requirements.

(a) In addition to specific packaging requirements, ORM's must be prepared for shipment in compliance with the following:

(1) Each material must be offered for transportation and transported in compliance with subparts B, C, and D of part 172 of this subchapter and subparts A and B of part 173.

(5) Portable tanks, tank cars, cargo tanks, hopper and dump type transport vehicles must be free from leaks and all openings must be securely closed during transportation. Open-

PROPOSED RULES

top freight containers and transport vehicles are not permitted for bulk shipments.

21. Subpart O would be added to read as follows:

Subpart O—Other Regulated Material; ORM-E

22. Section 173.1300 would be added to read as follows:

§ 173.1300 Hazardous waste, n.o.s.

(a) Hazardous waste, n.o.s. may not be offered for transportation unless packaged in accordance with § 173.510 and subparts A and B of this part.

(b) Except for § 171.3(c), this subchapter does not apply to a hazardous waste for which a manifest is not required by 40 CFR 250.22.

PART 174—CARRIAGE BY RAIL

23. In § 174.24 paragraph (b) would be revised to read as follows:

§ 174.24 Shipping papers.

(b) This subpart does not apply to a material classed as ORM- A, B, C, or D unless offered for transportation as a hazardous waste subject to 40 CFR part 250.

24. § 174.45 would be revised to read as follows:

§ 174.45 Reporting hazardous materials incidents.

When an incident occurs during transportation in which hazardous materials are involved, a report may be required. See §§ 171.15, 171.16, and 171.17 of this subchapter.

PART 175—CARRIAGE BY AIRCRAFT

25. In § 175.45 paragraph (d) would be added to read as follows:

§ 175.45 Reporting hazardous materials incidents.

(d) Each operator who transports a hazardous waste shall comply with the reporting requirements in § 171.17 of this subchapter, when a discharge of hazardous waste to the environment occurs during transportation.

PART 176—CARRIAGE BY VESSEL

26. In § 176.11 paragraph (e) would be revised to read as follows:

§ 176.11 Exceptions.

(e) Hazardous material classed and shipped as ORM-D is not subject to the requirements of this part unless offered for transportation as a hazardous waste subject to 40 CFR part 250.

27. In § 176.48 paragraph (b) would be revised to read as follows:

§ 176.48 Situation requiring report.

(b) When an incident occurs during transportation in which hazardous materials are involved, a report may be required. See §§ 171.15, 171.16, and 171.17 of this subchapter.

PART 177—CARRIAGE BY PUBLIC HIGHWAY

28. § 177.807 would be revised to read as follows:

§ 177.807 Reporting hazardous materials incidents.

When an incident occurs during transportation in which hazardous materials are involved, a report may be required. See §§ 171.15, 171.16, and 171.17 of this subchapter.

29. In § 177.823 paragraph (b) would be added to read as follows:

§ 177.823 Marking and placarding motor vehicles.

(b) Each motor vehicle transporting hazardous waste may have to be marked. See § 171.3 of this subchapter for marking requirements.

(49 U.S.C. 1803, 1804, 1808, 1811; 49 CFR 1.53(e) and paragraph (a)(4) of appendix A to part 102.)

NOTE.—The Materials Transportation Bureau has determined that this document does not contain a major proposal requiring the preparation of an economic impact statement under Executive Order 11821, as amended by Executive Order 11949, and OMB Circular A-107 nor an environmental impact statement under the National Environmental Policy Act (49 U.S.C. 4321 et seq.).

Issued in Washington, D.C., on May 19, 1978.

ALAN I. ROBERTS,
Director, Office of
Hazardous Materials Operations.

[FR Doc. 78-14590 Filed 5-24-78; 8:45 am]